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Attorney for Plaintiff  
MEGAN KELLY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

MEGAN KELLY,

Plaintiff,

vs.

APPLERA CORPORATION and DOES 1-20,  
inclusive,

Defendants.

Case No.: C-07-3002 MMC

**NOTICE OF MOTION AND MOTION  
FOR LEAVE TO FILE A FIRST  
AMENDED COMPLAINT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES AND DECLARATION OF  
MAUREEN E. MCFADDEN IN SUPPORT  
THEREOF**

Date: April 4, 2008  
Time: 9:00 a.m.  
Courtroom 7, 19<sup>th</sup> Floor  
The Honorable Maxine M. Chesney

TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 4, 2008 at 9:00 a.m. in Courtroom 7 of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, CA, plaintiff Megan Kelly will move for an order granting her leave to file a first amended complaint.

This motion is based on the grounds that a plaintiff may amend a complaint to set forth newly ascertained allegations, and is supported by the attached memorandum of points and authorities, the declaration of Maureen E. McFadden and all pleadings filed in this matter. A

1 proposed First Amended Complaint is lodged concurrently with plaintiff's moving papers and is  
2 attached hereto as Exhibit A.

3 DATED: February 29, 2008

LAW OFFICES OF MAUREEN E. MCFADDEN

4  
5 By:   
Maureen E. McFadden

6  
7 Attorney for Plaintiff  
MEGAN KELLY

**MEMORANDUM OF POINTS AND AUTHORITIES**

**A. Introduction**

Plaintiff Megan Kelly initially sued employer Applera Corporation for three claims: Failure to Engage in the Interactive Process; (2) Failure to Accommodate; and (3) Disability Discrimination, all relating to Ms. Kelly's ankle condition. These initial three claims related to Applera's conduct from January 2006 through April 2007, when the complaint was filed. An amended complaint is now necessary, to add additional allegations to the first three claims based on developments during the course of discovery in the case, and to add new claims for retaliation and disability discrimination, based on Applera's conduct since Ms. Kelly returned to work at Applera. Based on the federal policy of liberally granting leave to amend, this motion should be granted.

**B. Leave to Amend Should Be Granted**

Pursuant to Fed. R. Civ. Pro. Rule 15(a), once a responsive pleading has been served, "A party may amend his pleading only by leave of court or by written consent of the adverse party." Rule 15(a) further provides that "leave shall be freely given when justice so requires." As was stated by the United States Supreme Court in Foman v. Davis 371 U.S. 178, 182 (1962):

Rule 15(a) declares that leave to amend shall be freely given when justice requires; this mandate is to be heeded. If the underlying facts or circumstances relied upon by plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the allowance of the amendment, futility of amendment, etc. – the leave sought should, as the rules require, be "freely given." Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the federal rules.

Here, plaintiff only recently learned that Applera is claiming that she was not disabled at all, necessitating the addition of the other protected categories, "regarded as" having a disability, and having a history of having a disability, to the pleadings. Also, since the time of the filing of

1 this complaint, Applera continued to fail to engage in the interactive process in good faith, and  
2 plaintiff wishes to supplement these allegations. Additionally, after plaintiff finally returned to  
3 work in June 2007, she was subject to additional disability discrimination and retaliation by  
4 Applera. This conduct began occurring in early Fall of 2007. Plaintiff has been diligent in  
5 pursuing these additional claims, in that a timely amended complaint of discrimination was filed  
6 with the DFEH in November 2007. Despite the November filing, the DFEH failed to close this  
7 complaint and allow plaintiff to pursue it in court until February 20, 2008. (See McFadden  
8 Declaration ¶ 3) Immediately thereafter, plaintiff sought to amend her pleadings with this Court.  
9 Because the amended and new allegations are related to plaintiff's original claims, judicial  
10 efficiency and the interests of justice favor allowing plaintiff to amend as requested.

11 **CONCLUSION**

12 Based on the foregoing argument and authority, plaintiff Megan Kelly respectfully  
13 requests that the Court grant this motion for leave to file an amended complaint.

14  
15 DATED: February 29, 2008

LAW OFFICES OF MAUREEN E. MCFADDEN

16  
17 By:   
18

Maureen E. McFadden

19 Attorney for Plaintiff  
20 MEGAN KELLY  
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**DECLARATION OF MAUREEN E. MCFADDEN**

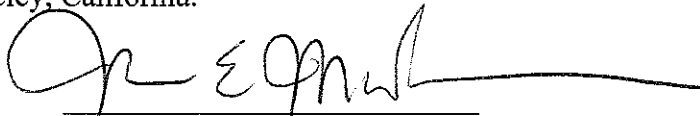
1  
2 1. I am an attorney duly admitted to practice before this Court, and the attorney of  
3 record for plaintiff Megan Kelly in this action. I have personal knowledge of the facts set forth  
4 herein, and if called as a witness, could and would testify thereto.

5 2. Attached hereto as Exhibit A is a true and correct copy of plaintiff's proposed first  
6 amended complaint.

7 3. In November 2007, plaintiff submitted an amended charge of discrimination to  
8 the DFEH, pertaining to discriminatory and retaliatory conduct defendant has engaged in since  
9 August 2007. True and correct copies of the amended DFEH charge, and the DFEH's February  
10 20, 2008 Notice of Case Closure, are attached hereto as Exhibit B.

11 I declare under penalty of perjury under the laws of the State of California and the United  
12 States of America that the foregoing is true and correct.

13 Executed on February 29, 2008 at Berkeley, California.

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15 Maureen E. McFadden  
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# EXHIBIT A

Maureen E. McFadden, SBN 203781  
LAW OFFICES OF MAUREEN E. MCFADDEN  
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Fax (510) 868-0976

Attorney for Plaintiff  
MEGAN KELLY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

MEGAN KELLY,

Plaintiff,

vs.

APPLERA CORPORATION and DOES 1-20,  
inclusive,

Defendants.

Case No.: C-07-3002 MMC

**FIRST AMENDED COMPLAINT**

1. Failure to Engage in the Interactive Process In Good Faith (Jan. 2006)
2. Failure to Accommodate
3. Failure to Engage in the Interactive Process in Good Faith (2007)
4. Employment Discrimination – Disability
5. Retaliation

**JURY TRIAL DEMANDED**

Plaintiff Megan Kelly alleges as follows:

**GENERAL ALLEGATIONS**

1. Plaintiff Megan Kelly is an individual who resides in Alameda County.
2. From on or about February 2002 and continuing to the present, plaintiff has been employed as an Associate Production Chemist at Applied Biosystems, which is part of Applera Corporation. At all times relevant hereto, plaintiff worked at Applera Corporation's Pleasanton location, which is in Alameda County. Plaintiff was at all times relevant to this action an "employee" of defendant Applera Corporation as that term is defined in California Govt. Code § 12926(c), part of the California Fair Employment and Housing Act ("FEHA," Govt. Code § § 12900 et seq.)

1           3. Defendant Applera Corporation was a corporation doing business in Alameda  
2 County, California at all times relevant hereto. Applera Corporation is and all times relevant  
3 hereto has been plaintiff's "employer" as that term is defined in California Govt. Code §§  
4 12926(d), 12940(a), and 12940(j)(4)(a).

5           4. The acts and omissions described herein all occurred in Alameda County.

6           5. The true names and capacities, whether individual, corporate, associate, or  
7 otherwise of the defendants named herein as DOES 1-20, inclusive, are unknown to plaintiff at  
8 this time and therefore said defendants are sued by such fictitious names. Plaintiff will seek  
9 leave to amend this complaint to insert the true names and capacities of said defendants when the  
10 same becomes known to her. Plaintiff is informed and believes and based thereon alleges that  
11 each of the fictitiously named defendants is responsible for the wrongful acts alleged herein, and  
12 are therefore liable to her as alleged hereinafter.

13           6. Each of the defendants was the agent of the remaining defendants, and in doing  
14 the acts alleged, was acting both individually and within the course and scope of such  
15 agency/employment, with the knowledge/consent of the remaining defendants.

16                           **FIRST CLAIM FOR RELIEF**

17                   **Failure to Engage in the Interactive Process in Good Faith (January 2006)**

18                           **(Against all Defendants)**

19           7. Plaintiff incorporates by reference paragraphs 1-6 above, as though fully set forth  
20 herein.

21           8. On or about July 6, 2004, plaintiff tripped and sprained her ankle. In September  
22 2004, after a short medical leave and physical therapy, plaintiff was released to return to work.  
23 As part of her return to work, plaintiff was supposed to be able to sit down whenever she needed  
24 to. However, defendants were extraordinarily busy during this timeframe, and short-handed.  
25 Plaintiff was pressured to get orders done quickly, and was seldom able to sit down.

26           9. On or about September 21, 2004, while moving about extensively and attending  
27 to multiple tasks at the same time, plaintiff re-injured her right ankle. Emergency room  
28 physicians diagnosed plaintiff with another ankle sprain, and she was again taken off of work.



1 The re-injury was quite serious, in that plaintiff's ankle did not heal well, and she continued  
2 experiencing serious instability in her right ankle. Tests performed by plaintiff's disability  
3 insurer in or about January 2005 to evaluate plaintiff's readiness to return to work seriously  
4 injured plaintiff's left wrist, requiring a visit to the emergency room. Several subsequent falls  
5 further aggravated the ankle injury, and plaintiff also sustained wrist injuries in some of those  
6 falls.

7 10. Plaintiff's ankle condition is a physical impairment that limited her ability to  
8 perform major life activities, including the major life activity of work. Plaintiff's ankle condition  
9 constituted a physical disability within the meaning of Govt. Code § 12926(k).

10 11. As to her ankle condition, plaintiff was also regarded and treated by defendant as  
11 having, or having had, a physical disability that makes the achievement of a major life activity  
12 more difficult, within the meaning of the Fair Employment and Housing Act.

13 12. From July 2004 and continuing to the present, Defendant has been aware of  
14 plaintiff's ankle condition, such that plaintiff had a record or history of having a physical  
15 disability known to defendant, within the meaning of the Fair Employment and Housing Act.

16 13. The severity of plaintiff's disability required her to remain off of work for a  
17 period of time. Plaintiff presented defendants with physicians' notes in support of her requests  
18 for time off of work. Plaintiff also regularly left telephone messages with her immediate  
19 supervisor, Jonathon Laosiri, regarding her status and the progress of her recovery.

20 14. In January 2006, plaintiff's physicians determined that she was well enough to  
21 return to work, with restrictions on the number of hours she could work, a restriction on lifting  
22 any more than 20 lbs, and a requirement that she sit down every hour for at least 10 minutes.  
23 Plaintiff provided defendants with a physician's note authorizing her to return to work, and  
24 specifying these restrictions.

25 15. Plaintiff's immediate supervisor failed to return plaintiff's calls with regard to  
26 getting back to work. She then approached defendant's HR department directly, and against  
27 explained that she was authorized to return to work, and the nature of her work restrictions.

1           16. Defendant made no effort to get plaintiff back to work. Instead, the company  
2 summarily informed plaintiff that she could not return to work at least 20 hours a week without  
3 restrictions, or 40 hours with restrictions.

4           17. Govt. Code § 12940(n) makes it illegal “for an employer. . . to fail to engage in a  
5 timely, good faith interactive process with the employee or applicant to determine effective  
6 reasonable accommodation by an employee or applicant with a known physical or mental  
7 disability or known medical condition.”

8           18. By refusing to given any consideration whatsoever to plaintiff’s request for  
9 accommodation, defendants violated their obligation to engage in the interactive process,  
10 contrary to Govt. Code § 12940(n).

11           19. Plaintiff filed a timely charge of disability discrimination with the California  
12 Department of Fair Employment and Housing (DFEH), naming Applied Biosystems as a  
13 respondent in the body of said complaint. Plaintiff has received a right to sue notice for this  
14 charge pursuant to Govt. Code § 12965(b). Plaintiff filed this action within one year from the  
15 date she received her “right to sue” letter from the DFEH, and has therefore properly exhausted  
16 her administrative remedies.

17           20. As a direct and proximate result of the wrongful acts of defendants, and each of  
18 them, plaintiff has suffered and continues to suffer physical pain, severe emotional distress,  
19 including without limitation, depression, hopelessness, embarrassment, humiliation, degradation,  
20 loss of self-esteem, and mental anguish. As a result, plaintiff is entitled to general and  
21 compensatory damages according to proof.

22           21. As a further direct and proximate result of the wrongful acts of defendants  
23 described herein, plaintiff has been forced to hire an attorney to prosecute her claims, and has  
24 incurred and will continue to incur attorneys’ fees and costs. Plaintiff is entitled to recover such  
25 attorneys’ fees and costs under Govt. Code § 12965(b).

26           22. The outrageous conduct of defendants described herein was done with malice,  
27 fraud, and oppression, with conscious disregard for plaintiff’s rights, and with the intent, design  
28 and purpose of injuring her. Defendants, through their officers, managing agents and/or

1 supervisors, authorized, condoned, and/or ratified the unlawful conduct alleged herein. By reason  
 2 thereof, plaintiff is entitled to punitive or exemplary damages from all defendants in a sum  
 3 according to proof at trial.

## 4 **SECOND CLAIM FOR RELIEF**

### 5 **Failure to Accommodate**

#### 6 **(Against all Defendants)**

7 23. Plaintiff incorporates by reference paragraphs 1-22 above, as though fully set  
 8 forth herein.

9 24. Pursuant to Govt. Code § 12940(m), defendants had a duty to accommodate  
 10 Plaintiff's ankle condition. Despite actual knowledge of plaintiff's disability, and multiple  
 11 requests for accommodation, defendants refused to offer any reasonable accommodations to  
 12 allow plaintiff to return to work. In doing the foregoing acts, defendants failed to accommodate  
 13 plaintiff's disability, in violation of Govt. Code § 12940(m).

14 25. Plaintiff filed a timely charge of disability discrimination with the California  
 15 Department of Fair Employment and Housing (DFEH), naming Applied Biosystems (a name  
 16 under which Applera does business) as a respondent in the body of said complaint. Plaintiff has  
 17 received a right to sue notice for this charge pursuant to Govt. Code § 12965(b). Plaintiff filed  
 18 this action within one year from the date she received her "right to sue" letter from the DFEH,  
 19 and has therefore properly exhausted her administrative remedies.

20 26. As a direct and proximate result of the wrongful acts of defendants, and each of  
 21 them, plaintiff has suffered and continues to suffer physical pain, severe emotional distress,  
 22 including without limitation, depression, hopelessness, embarrassment, humiliation, degradation,  
 23 loss of self-esteem, and mental anguish. As a result, plaintiff is entitled to general and  
 24 compensatory damages according to proof.

25 27. As a further direct and proximate result of the wrongful acts of defendants  
 26 described herein, plaintiff has been forced to hire an attorney to prosecute her claims, and has  
 27 incurred and will continue to incur attorneys' fees and costs. Plaintiff is entitled to recover such  
 28 attorneys' fees and costs under Govt. Code § 12965(b).

1           28.     The outrageous conduct of defendants described herein was done with malice,  
2 fraud, and oppression, with conscious disregard for plaintiff's rights, and with the intent, design  
3 and purpose of injuring her. Defendants, through their officers, managing agents and/or  
4 supervisors, authorized, condoned, and/or ratified the unlawful conduct alleged herein. By reason  
5 thereof, plaintiff is entitled to punitive or exemplary damages from all defendants in a sum  
6 according to proof at trial.

7                               **THIRD CLAIM FOR RELIEF**

8                               **Failure to Engage in the Interactive Process in Good Faith (2007)**

9                               **(Against all Defendants)**

10           29.     Plaintiff incorporates by reference paragraphs 1-28 above, as though fully set  
11 forth herein.

12           30.     In February 2007, after Applera told plaintiff it was going to terminate her,  
13 plaintiff again advised the company of her work restrictions, and requested accommodations that  
14 would allow her to return to work. Plaintiff kept defendants advised of her work restrictions at  
15 all times thereafter.

16           31.     Despite plaintiff's requests, defendant delayed having an interactive meeting with  
17 plaintiff, and then further delayed her return to work until June 2007.

18           32.     Govt. Code § 12940(n) makes it illegal "for an employer. . . to fail to engage in a  
19 timely, good faith interactive process with the employee or applicant to determine effective  
20 reasonable accommodation by an employee or applicant with a known physical or mental  
21 disability or known medical condition."

22           33.     By engaging in the above-referenced conduct during 2007, defendants violated  
23 their obligation to engage in the interactive process in good faith, contrary to Govt. Code §  
24 12940(n).

25           34.     As a direct and proximate result of the wrongful acts of defendants, and each of  
26 them, plaintiff has suffered and continues to suffer physical pain, severe emotional distress,  
27 including without limitation, depression, hopelessness, embarrassment, humiliation, degradation,  
28

1 loss of self-esteem, and mental anguish. As a result, plaintiff is entitled to general and  
2 compensatory damages according to proof.

3 35. As a further direct and proximate result of the wrongful acts of defendants  
4 described herein, plaintiff has been forced to hire an attorney to prosecute her claims, and has  
5 incurred and will continue to incur attorneys' fees and costs. Plaintiff is entitled to recover such  
6 attorneys' fees and costs under Govt. Code § 12965(b).

7 36. The outrageous conduct of defendants described herein was done with malice,  
8 fraud, and oppression, with conscious disregard for plaintiff's rights, and with the intent, design  
9 and purpose of injuring her. Defendants, through their officers, managing agents and/or  
10 supervisors, authorized, condoned, and/or ratified the unlawful conduct alleged herein. By reason  
11 thereof, plaintiff is entitled to punitive or exemplary damages from all defendants in a sum  
12 according to proof at trial.

13 **FOURTH CLAIM FOR RELIEF**

14 **Employment Discrimination – Disability**

15 **(Against all Defendants)**

16 37. Plaintiff incorporates by reference paragraphs 1-36 above, as though fully set  
17 forth herein.

18 38. The above-described conduct, including but not limited to defendant's refusal to  
19 allow plaintiff to return to work, were adverse and discriminatory actions taken based on  
20 plaintiff's physical disabilities.

21 39. After plaintiff returned to work in June 2007, defendant engaged in further  
22 disability discrimination, including the following examples:

23 a. Plaintiff has repeatedly been given paychecks which inaccurately reflect  
24 the hours she worked. In August 2007, Applera shorted plaintiff 20 hours on her paycheck, and  
25 failed to timely rectify this error. Despite plaintiff's complaints, the errors in her paychecks  
26 continue to occur, to plaintiff's detriment.

27 b. In or about September 2007, plaintiff was not notified of an all-hands  
28 employee meeting. She found out about the meeting accidentally, shortly before it was

1 scheduled to begin. Plaintiff tried to attend the meeting, but found out that it had been scheduled  
2 in a second floor location that was inaccessible to her because of her disability, in that it had  
3 unsafe stairs and no elevator. Before the meeting took place, plaintiff had asked her supervisor  
4 to provide with her notes about what happened at the meeting. Plaintiff still had to make  
5 multiple requests for this information before it was provided. The information plaintiff's  
6 supervisor finally provided about the meeting contained various acronyms unknown to plaintiff.  
7 Plaintiff's supervisor refused to clarify what the acronyms mean.

8 c. In or about September 2007, plaintiff was not notified of an official  
9 company sponsored barbecue event which the other employees and the leaders of the company  
10 attended. If defendant had provided plaintiff with notice of this event, she would have  
11 rearranged her schedule to ensure her attendance at the barbecue.

12 d. Since returning to work in June 2007, plaintiff has not received notice of  
13 numerous other events, including birthday parties. Plaintiff has also failed to receive notification  
14 of important company changes in methods of production/packaging.

15 40. The above-described conduct constitutes discriminatory changes in the terms and  
16 conditions of plaintiff's employment, based on her disability.

17 41. Plaintiff filed a timely charge of disability discrimination with the California  
18 Department of Fair Employment and Housing (DFEH), naming Applied Biosystems as a  
19 respondent in the body of said complaint. Plaintiff received a right to sue notice for this charge  
20 pursuant to Govt. Code § 12965(b). Plaintiff filed an amended charge of discrimination against  
21 Applied Biosystems/Aplera with the DFEH, alleging disability discrimination and retaliation  
22 based on Aplera's above-described conduct since plaintiff returned to work in June 2007.  
23 Plaintiff filed this action within one year from the date she received her "right to sue" letter from  
24 the DFEH, and has therefore properly exhausted her administrative remedies.

25 42. As a direct and proximate result of the wrongful actions of defendants, plaintiff  
26 has been harmed in that she has suffered actual, consequential and incidental financial losses,  
27 including without limitation, loss of earnings and other employment benefits and the intangible  
28 loss of employment-related opportunities for growth in her field and damage to her professional



1 reputation, all in an amount subject to proof at the time of trial. Plaintiff claims such amounts as  
2 damages together with prejudgment interest pursuant to Civil Code § 3287 and or Civil Code §  
3 3288 and/or any other provision of law providing for prejudgment interest.

4 43. As a direct and proximate result of the wrongful acts of defendants, and each of  
5 them, plaintiff has suffered and continues to suffer physical pain, severe emotional distress,  
6 including without limitation, depression, hopelessness, embarrassment, humiliation, degradation,  
7 loss of self-esteem, and mental anguish. As a result, plaintiff is entitled to general and  
8 compensatory damages according to proof.

9 44. As a further direct and proximate result of the wrongful acts of defendants  
10 described herein, plaintiff has been forced to hire an attorney to prosecute her claims, and has  
11 incurred and will continue to incur attorneys' fees and costs. Plaintiff is entitled to recover such  
12 attorneys' fees and costs under Govt. Code § 12965(b).

13 45. The outrageous conduct of defendants described herein was done with malice,  
14 fraud, and oppression, with conscious disregard for plaintiff's rights, and with the intent, design  
15 and purpose of injuring her. Defendants, through their officers, managing agents and/or  
16 supervisors, authorized, condoned, and/or ratified the unlawful conduct alleged herein. By reason  
17 thereof, plaintiff is entitled to punitive or exemplary damages from all defendants in a sum  
18 according to proof at trial.

19 **FIFTH CLAIM FOR RELIEF**

20 **Retaliation**

21 **(Against all Defendants)**

22 46. Plaintiff incorporates by reference paragraphs 1-45 above, as though fully set  
23 forth herein.

24 47. Plaintiff engaged in protected activity by complaining about and opposing the  
25 discrimination against her, by filing charges with the DFEH, by filing a lawsuit against Applera,  
26 and by otherwise exercising her rights under FEHA, including but not limited to making requests  
27 for accommodation for her disability.  
28

1           48.     Adverse employment actions taken against PLAINTIFF, with reference to the  
2     totality of Applera's conduct towards PLAINTIFF, include the conduct described above, and: (1)  
3     refusing to allow plaintiff to return to work; (2) incorrectly paying plaintiff; (3) not inviting  
4     plaintiff to company meetings and events; and (4) holding meetings in areas inaccessible to  
5     plaintiff because of her disability. A causal connection exists between plaintiff's protected  
6     activities and these adverse employment actions.

7           49.     Plaintiff filed a timely charge of retaliation with the California Department of Fair  
8     Employment and Housing (DFEH), naming Applied Biosystems/Aplera as a respondent in the  
9     body of said complaint. Plaintiff received a right to sue notice for this charge pursuant to Govt.  
10    Code § 12965(b). Plaintiff filed this action within one year from the date she received her "right  
11    to sue" letter from the DFEH, and has therefore properly exhausted her administrative remedies.

12          50.     As a direct and proximate result of the wrongful actions of defendants, plaintiff  
13    has been harmed in that she has suffered actual, consequential and incidental financial losses,  
14    including without limitation, loss of earnings and other employment benefits and the intangible  
15    loss of employment-related opportunities for growth in her field and damage to her professional  
16    reputation, all in an amount subject to proof at the time of trial. Plaintiff claims such amounts as  
17    damages together with prejudgment interest pursuant to Civil Code § 3287 and or Civil Code §  
18    3288 and/or any other provision of law providing for prejudgment interest.

19          51.     As a direct and proximate result of the wrongful acts of defendants, and each of  
20    them, plaintiff has suffered and continues to suffer physical pain, severe emotional distress,  
21    including without limitation, depression, hopelessness, embarrassment, humiliation, degradation,  
22    loss of self-esteem, and mental anguish. As a result, plaintiff is entitled to general and  
23    compensatory damages according to proof.

24          52.     As a further direct and proximate result of the wrongful acts of defendants  
25    described herein, plaintiff has been forced to hire an attorney to prosecute her claims, and has  
26    incurred and will continue to incur attorneys' fees and costs. Plaintiff is entitled to recover such  
27    attorneys' fees and costs under Govt. Code § 12965(b).



53. The outrageous conduct of defendants described herein was done with malice, fraud, and oppression, with conscious disregard for plaintiff's rights, and with the intent, design and purpose of injuring her. Defendants, through their officers, managing agents and/or supervisors, authorized, condoned, and/or ratified the unlawful conduct alleged herein. By reason thereof, plaintiff is entitled to punitive or exemplary damages from all defendants in a sum according to proof at trial.

WHEREFORE, Plaintiff requests the following judgment and relief:

1. For compensatory and general damages in an amount according to proof;
2. For emotional distress;
3. For punitive damages;
4. For statutory attorneys' fees and costs;
5. For pre-judgment and post-judgment interest according to any applicable provision of law, according to proof;
6. For costs of suit; and
7. For such other and further relief as the court deems proper.

**JURY TRIAL DEMANDED**

DATED: February 29, 2008

LAW OFFICES OF MAUREEN E. MCFADDEN

By: 

Maureen E. McFadden

Attorney for Plaintiff  
MEGAN KELLY

# EXHIBIT B

**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

1515 Clay Street, Suite 701, Oakland, CA 94612  
(510) 622-2973 TTY (800) 700-2320 Fax (510) 622-2952  
www.dfeh.ca.gov



February 20, 2008

MAUREEN E. MCFADDEN  
ATTORNEY AT LAW  
LAW OFFICE OF MAUREEN E. MCFADDEN  
819 BANCROFT WAY  
BERKELEY, CA 94710

RE: E200607A0570-01-pc  
MEGAN/APPLERA CORPORATION (AKA) APPLIED BIOSYSTEMS

Dear MAUREEN E. MCFADDEN:

**NOTICE OF CASE CLOSURE**

This letter informs that the above-referenced complaint that was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective January 9, 2007 because an immediate right-to-sue notice was requested. DFEH will take no further action on the complaint.

This letter is also the Right-To-Sue Notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

If a federal notice of Right-To-Sue is wanted, the U.S. Equal Employment Opportunity Commission (EEOC) must be visited to file a complaint within 30 days of receipt of this DFEH *Notice of Case Closure* or within 300 days of the alleged discriminatory act, whichever is earlier.

Notice of Case Closure  
Page Two

DFEH does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,

A handwritten signature in black ink, appearing to read "Herb Yarbrough". The signature is fluid and cursive, with the first name "Herb" and last name "Yarbrough" clearly distinguishable.

Herbert Yarbrough  
District Administrator

cc: Case File

HUMAN RESOURCE DIRECTOR  
APPLERA CORPORATION  
AKA APPLIED BIOSYSTEMS  
850 LINCOLN CENTRE DR.  
FOSTER CITY, CA 94508

## \*\*\* EMPLOYMENT \*\*\*

COMPLAINT OF DISCRIMINATION UNDER  
THE PROVISIONS OF THE CALIFORNIA  
FAIR EMPLOYMENT AND HOUSING ACT

DFEH # E200607A-0570-01-prc

DFEH USE ONLY

THIS IS RELATED TO DFEH CASE# E200607A0570-01

## CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

YOUR NAME (indicate Mr. or Ms.)

Megan Kelly

TELEPHONE NUMBER (INCLUDE AREA CODE)

510-845-7636

ADDRESS

2009 McGee, No. 2

CITY/STATE/ZIP

Berkeley, CA 94703

COUNTY

COUNTY CODE

NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE,  
OR STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME:

Appera Corporation (aka Applied Biosystems)

TELEPHONE NUMBER (include Area Code)

ADDRESS

850 Lincoln Centre Drive

DFEH USE ONLY

CITY/STATE/ZIP

Foster City, CA

COUNTY

COUNTY CODE

NO. OF EMPLOYEES/MEMBERS (if known)

DATE MOST RECENT OR CONTINUING DISCRIMINATION  
TOOK PLACE (month, day, and year)

October 2007

RESPONDENT CODE

THE PARTICULARS ARE:

On June 18, 2007 to the present

I was

☐ fired☐ laid off☐ demoted☐ harassed☐ genetic characteristics testing☐ forced to quit☐ denied employment☐ denied promotion☐ denied transfer☒ denied accommodation☐ impermissible non-job-related inquiry☒ other (specify)☐ denied family or medical leave☐ denied pregnancy leave☐ denied equal pay☐ denied right to wear pants☐ denied pregnancy accommodation

by See Attachment A

Name of Person

Job Title (supervisor/manager/personnel director/etc.)

because of my:

☐ sex☐ age☐ religion☐ race/color☐ national origin/ancestry☐ marital status☐ sexual orientation☐ association☒ physical disability☐ cancer☐ mental disability☐ genetic characteristic☐ other (specify)(Circle one) filing:  
Protesting, participating in  
investigation (retaliation for)

the reason given by See Attachment A

Name of Person and Job Title

Was because See Attachment A

of [please

state what

you believe to

be reason(s)]

RECEIVED

NOV 20 2007

I wish to pursue this matter in court. I hereby request that the Department of Fair Employment and Housing provide a right-to-sue notice. I understand that if I want a federal notice of right-to-sue, I must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of the DFEH "Notice of Case Closure," or within 300 days of the alleged discriminatory act, whichever is earlier.

I have not been coerced into making this request, nor do I make it based on fear of retaliation if I do not do so. I understand it is the Department of Fair Employment and Housing's policy to not process or reopen a complaint once the complaint has been closed on the basis of "Complainant Elected Court Action."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to matters stated on my information and belief, and as to those matters I believe it to be true.

Dated

11/9/07

At

Berkeley

City

COMPLAINANT'S SIGNATURE

DATE FILED:

DFEH-300-03 (01/05)

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

STATE OF CALIFORNIA

## Attachment A

Megan Kelly/Applera Corporation

After a leave of absence due to my disability (ankle injury and complications stemming from that injury) I returned to work at Applied Biosystems on or about June 18, 2007. Since my return, the following has occurred:

(1) In or about August 2007, I was shorted 20 hours on my paycheck. I immediately notified Applera, but it failed to timely rectify the non-payment of all wages I had earned for that time period. Further issues with incorrect pay have continued to occur.

(2) In or about September 2007, I was not notified of an all-hands employee meeting. I found out about the meeting accidentally, shortly before it was scheduled to begin. I tried to attend the meeting, but found out it had been scheduled for a location that was not accessible to me given my disability, in that it had unsafe stairs, and no elevator.

(3) In or about October 2007, Applera failed to notify me about an official company sponsored barbecue event which the other employees and the leaders of the company attended. If Applera had given me notice of this event, I would have re-arranged my schedule to ensure my attendance at the barbecue.

Applera's constitutes disability discrimination (including as to the terms and conditions of employment) and a failure to accommodate. Applera's conduct is also retaliatory, based on my having protested the company's discriminatory practices, and for having filed an earlier DFEH charge and lawsuit alleging disability discrimination.